road accident delaying attorney, *Omro* v. *Ward*, 19 Wis. 233; accidental shooting preventing appearance, *Hargis* v. *Begley*, 129 Ky. 477; party insane, *Southern Nat. Life Ins. Co.* v. *Ford's Admr.*, 151 Ky. 476; party imprisoned, *Bonell* v. *R. W. & O. R. R. Co.*, 12 Hun. 218. There is a relation of principal and agent between client and counsel. So the neglect of the attorney in permitting judgment to be taken against his client is the neglect of the client and cannot be urged as grounds for vacating the judgment. *Moore* v. *Horner*, 146 Ind. 287; *Ham* v. *Person*, 173 N. C. 72. Even when the client is free from all fault. *Phillips & Co.* v. *Collier*, 87 Ga. 66. So, too, when the neglect of the attorney is excusable, this is as much available as grounds to set aside the judgment as though it had been the excusable conduct of the party. *Melde* v. *Reynolds*, 129 Cal. 308; *Collier* v. *Fitzpatrick*, 22 Mont. 553. A few courts hold the neglect of counsel may be considered surprise or unavoidable casualty on the part of the client, and vacate the judgment. *Swathney* v. *Savage*, 101 N. C. 103. It seems that the party must assume the risk of selecting a careful and diligent attorney. Each party is entitled to his day in court, but both must take advantage of his opportunities and be diligent in prosecuting or defending. If one party is negligent the other party should not be put to further inconvenience and the risk of losing his judgment by the setting aside of that judgment and a new trial. But if one party suffers unavoidable casualty or misfortune, such is a proper basis for setting aside the judgment. The negligence of counsel should not be considered unavoidable casualty. Just what facts show such misfortune is a question over which the courts are in confusion. The decision must of necessity be left largely to the discretion of the trial court. Upon these principles the principal cases appear to be correctly decided. In the Oklahoma case mere neglect of counsel was not considered unavoidable casualty. On the other hand, in the Arkansas case there was no negligence on the part of counsel or party, but rather an event which human foresight could not prevent, the mistake of the court. See also *Hodges* v. *Alexander*, 44 Okla. 598; *Anaconda Mining Co.* v. *Saile*, 16 Mont. 8.

MASTER AND SERVANT—EMPLOYER CONTRACTING WITHOUT EXPECTATION OF PROFIT MERELY TO PROVIDE DOCTORS FOR EMPLOYEES NOR LIABLE FOR LATTER'S NEGLIGENCE IN ATTENDING THEM.—A coal company employed a physician to give medical treatment to its employees, deducting a small sum each month from their wages, out of which his salary was paid. The company itself derived no profit from the fund. In an action by the administrator of an employee for damages on account of the negligence of the physician so employed which resulted in the death of the plaintiff's intestate, *held*, that the company was not liable in the absence of a showing of lack of ordinary care in the selection of the physician, or a retention with knowledge of incompetency. *Virginia Iron, Coal & Coke Company* v. *Odle's Admr.* (Va., 1920), 105 S. E. 107.

In the absence either of an express contract on the part of the employer to furnish skilled medical treatment, or a profit accruing to the latter from

wage deductions, most cases support the result reached in the principal case, though not all are consistent as to the underlying theory. Whether the employer contributes all, part, or nothing to the support of the physician, the result is the same, providing he receives no profit from the arrangement, and he is liable only for failure to use reasonable care in employing a competent physician or for the retention of one known to be incompetent. *Pittsburg, etc., R. Co.* v. *Sullivan,* 141 Ind. 83; *Quinn* v. *Railroad Co.,* 94 Tenn. 713; *Railroad Co.* v. *Artist,* 60 Fed. 365; *Eighmy* v. *U. P. R. Co.,* 93 Ia. 538; *Haggerty* v. *St. Louis R. Co.,* 100 Mo. App. 424; *Guy* v. *Lanark Fuel Co.,* 72 W. Va. 728; *Richardson* v. *Carbon Hill Coal Co.,* 10 Wash. 648; *Wells* v. *Ferry-Baker Co.,* 57 Wash. 658; *Ark., etc., R. Co.* v. *Pearson,* 98 Ark. 399; *Big Stone Gap Co.* v. *Ketron,* 102 Va. 23; *Poling* v. *San Antonio R. Co.,* 32 Tex. Civ. App. 487; *Nicholson* v. *Atchison, etc., Hospital Ass'n,* 97 Kan. 480; *Nations* v. *Luddington, etc., R. Co.,* 133 La. 657. Contra, *Phillips* v. *St. Louis R. Co.,* 211 Mo. 419. One line of cases cited takes the ground that where no profit is received the principle exempting charitable hospitals from liability for negligence of physicians applies. *Railroad Co.* v. *Artist, supra; Wells* v. *Ferry-Baker Co., supra.* See 18 MICH. L. REV. 539, as to liability of charitable hospitals, and 4 L. R. A. (N. S.) 66, as to relation of that to the present problem. The analogy to charitable hospitals is disapproved in *Haggerty* v. *St. Louis R. Co., supra,* and *Ark., etc., R. Co.* v. *Pearson, supra,* inasmuch as the purpose of the employer cannot be said to be purely philanthropical. The better ground seems to be that of the principal case, which holds the physician to be neither a servant nor an agent but an independent contractor. On that theory the employer is liable only when there is a contractual relation between the employer and employee, making it the duty of the former to furnish skilled medical treatment, which cannot be evaded through the interposition of an independent contractor. An express contract to this effect is obviously sufficient. *Wells* v. *Ferry-Baker Co., supra; Sawdey* v. *Spokane, etc., R. Co.,* 30 Wash. 349. Such a contract will be implied where the employer derives an actual profit from the wage deduction. *Texas Coal Co.* v. *Connaughton,* 20 Tex. Civ. App. 642; *Sawdey* v. *Spokane, etc., R. Co., supra.* As the test by which the status of a hospital as charitable or otherwise is ascertained is whether or not a profit is received, and since a non-charitable hospital is liable for the negligence of its physicians, it is clear that the same result is obtained whether or not the analogy of the charitable hospital is applied in cases of the present type.

MUNICIPAL CORPORATIONS—CITY OWED NO DUTY OF ACTIVE INSPECTION OF AUTOMOBILE IN FAVOR OF ASSESSOR SOLICITING RIDE.—The city of Yonkers placed one of its automobiles in the charge and control of the city engineer. The city assessor, wishing to go to a distant part of the city for the purpose of transacting certain business in the line of his official duties, asked the engineer to take him there. Due to a defect in its steering apparatus, the car was overturned and the assessor was killed. His administratrix brought this action for damages on the theory that the city should have inspected the